

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FONDIA MOORE,

Plaintiff,

v.

DOUG WADDINGTON *et al.*,

Defendants.

Case No. C06-5209FDB

REPORT AND
RECOMMENDATION

**NOTED FOR:
June 9th 2006**

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. After reviewing the complaint in this action the undersigned recommends that the action be **DISMISSED WITH PREJUDICE** prior to service with dismissal counting as a strike pursuant to 28 U.S.C. § 1915 (g) for failure to state a claim.

FACTUAL BACKGROUND

Plaintiff names the Superintendent of the prison where he is housed, a Sergeant Anderson, and two Correctional Officers Holms and Nelson. Plaintiff alleges he fell on two different occasions and that the Officers and Sergeant should have written accident reports.

Plaintiff alleges he is now pursuing a tort claim and needs the accident reports. Plaintiff requests all his

1 medical bills for the rest of his life be paid by the defendants and he asks for One Hundred Thousand Dollars in
2 punitive damages. (Dkt. # 1, proposed complaint).

3 DISCUSSION

4 In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the
5 conduct complained of was committed by a person acting under color of state law and that (2) the conduct
6 deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the United
7 States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on other grounds*, Daniels v. Williams, 474
8 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these
9 elements are present. Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S.
10 1020 (1986).

11 The complaint fails to state a cause of action under 42 U.S.C. § 1983. An inmate possesses no
12 constitutional right to have his alleged accident documented by the officers.

13 CONCLUSION

14 Plaintiff cannot bring a 42 U.S.C. § 1983 action for failure to file or write an accident report. His
15 allegations simply fail to state a claim as a matter of law. The action should be **DISMISSED WITH**
16 **PREJUDICE**. Dismissal for failure state a claim counts as a strike pursuant to 28 U.S.C. 1915 (g). A
17 proposed order accompanies this report and recommendation.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
19 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.
20 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v
21 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to
22 set the matter for consideration on **June 9th, 2006**, as noted in the caption.

23
24 DATED this 16th day of May, 2006.

25
26 /s/ J. Kelley Arnold
27 J. Kelley Arnold
28 United States Magistrate Judge